

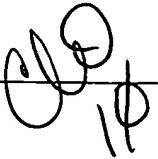


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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,567	12/06/2001	Karl-Heinz Staffa	016906-0222	8696
7590	02/23/2004			EXAMINER
Richard L Schwaab Foley & Lardner Washington Harbour 3000 K Street NW Suite 500 Washington, DC 20007-5109			LEO, LEONARD R	
		ART UNIT	PAPER NUMBER	
		3753	(14)	
DATE MAILED: 02/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/936,567	STAFFA ET AL. 
	Examiner	Art Unit
	Leonard R. Leo	3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 December 2003.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 11-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 11-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

The amendment filed on December 3, 2003 has been entered. Claims 1-10 are cancelled, and claims 11-17 are pending.

### *Specification*

The disclosure is objected to because of the following informalities:

Reference to claims in the specification should be removed.

Appropriate correction is required.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. *Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading.* If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).

- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

***Claim Objections***

Claim 16 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

The recitation of a "single soldering operation ... in which all the rest of the soldered joints are produced" in claim 16 does not further limit claim 14 reciting "slot or slots are put into the header blank after the longitudinal gap is soldered or welded shut." Thus, tubes and fins are connected in a subsequent soldering procedure after the header blank is formed from the "soldered or welded shut" procedure.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The originally filed specification lacks an adequate written description of the invention.

There is no support for "mechanical thinning" as recited in claims 11 and 17.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fink.

Fink discloses all the claimed limitations except the specific ratio ( $D/D_1$ ). As permissibly gleaned from Figure 3, the ratio of  $D/2s$  is about 3.

The specific ratio ( $D/D_1$ ) is considered to be an obvious choice, producing no new and/or unexpected results and solving no stated problem. As disclosed in the specification, the ratio values are a mere preference without any disclosed advantage, function or purpose. As such, it would have been obvious to one of ordinary skill in the art to employ any ratio ( $D/D_1$ ) for the purpose of minimizing pressure drop.

The recitation of "slots being created by stamping without an inner die or by internal high-pressure formation" is considered to be a method limitation in an apparatus claim, which bears no patentable weight in this instance. See MPEP 2113.

Regarding claim 12, it would have been obvious to one having ordinary skill in the art at the time the invention was made to any material having desirable physical properties, such as hardness, ductility, workability, cost, heat transfer, corrosion resistance, etc., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of

its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claims 14-17, the presence of method limitations in an apparatus claim bears no patentable weight in this instance. See MPEP 2113.

***Response to Arguments***

Initially, applicants' amendment is non-responsive with respect to the claim and specification objections above. Further correspondence must be responsive.

The rejections in view of Taylor, Okada et al and Buchanan et al are withdrawn. Upon reading the entire disclosure of Buchanan et al, the header is formed as follows:

- flat sheet 36 (Figure 1) is rolled into tube blank 34 (Figure 2);
- tube blank 34 is internally pressured and placed between dies 42, 44 (Figure 6) to form a tube blank 52 with bulges 54 (Figures 7-9); and
- ***tube blank 52 is placed in apparatus 58 to form slots 66 without "any kind of internal mandrel" (column 9, lines 16-19).***

Thus, applicants' interpretation of Buchanan is mistaken.

Applicants' arguments have been fully considered but they are not persuasive.

The "mechanical thinning," which has been rejected as new matter above, is disclosed as a method step prior to formation of the tube slot(s). In the apparatus claim, i.e. final product, the method step does not produce any structural limitation other than facilitating the formation of the slot(s). As recited in claim 17, the "mechanical thinning" is better suited in the hybrid method claims. However, as noted above, the method claims depend on an apparatus claim and bear no patentable weight in this instance.

The rejection in view of Fink is deemed correct for the following reasons.

Applicant is silent with respect to permissibly gleaning from Figure 3 of Fink, the ratio of D/2s is about 3.

Applicant is silent with respect the ratio (D/D<sub>1</sub>) being an obvious choice as set forth above.

Applicant is silent with respect to the consideration of method limitations in an apparatus claim.

No further comments are necessary at this time.

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry of a general nature, relating to the status of this application or clerical nature (i.e. missing or incomplete references, missing or incomplete Office actions or forms) should be

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directed to the Technology Center 3700 Customer Service whose telephone number is (703) 306-5648. Status of the application may also be obtained from the Internet: <http://pair.uspto.gov/cgi-bin/final/home.pl>

Any inquiry concerning this Office action should be directed to Leonard R. Leo whose telephone number is (703) 308-2611.



LEONARD R. LEO  
PRIMARY EXAMINER  
ART UNIT 3753

February 19, 2004